13

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 182.

JAKE BUTLER, PLAINTIFF IN ERROR,

vs.

J. W. PERRY, AS SHERIFF OF COLUMBIA COUNTY, FLORIDA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED JUNE 27, 1914.

(24,281)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 23, 1915.

1 In the Supreme Court of Florida.

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida, Defendant in Error.

Habeas Corpus.

Transcript of Record of Proceedings in the Circuit Court of Columbia County, Florida, in the Suit of Jake Butler, Plaintiff, vs. J. W. Perry, Sheriff of Columbia County, Florida, Defendant, Therein Lately Pending.

On the 5th day of March, 1914, the petition of petitioner for a writ of habeas corpus was presented to the Circuit Judge and filed by him, which said petition is in words and figures following:

In the Circuit Court of the Third Judicial Circuit of Florida in and for Columbia County.

JAKE BUTLER, Petitioner,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida, Defendant.

Habeas Corpus.

Petition.

To Honorable M. F. Horne, Judge of the Circuit Court of the Third Judicial Circuit of Florida in and for Columbia County:

Your petitioner, Jake Butler, of Columbia County, Florida, by his undersigned attorney, respectfully showeth unto your Honor as follows:

That on the 28th day of February, 1914, your petitioner was convicted before the County Judge's Court of Columbia County, Florida, upon a charge of failing to work a certain public road in said County, and that the said Court on that said day imposed a sentence on your petitioner, requiring him, as petitioner is advised, to pay a
2 fine of $5.00 and costs of the said prosecution, or to be imprisoned in the county jail of said County at hard labor for a term of thirty (30) days; and your petitioner avers that he is financially unable to pay the said fine, and has not paid the same, but is now, and has been since the 28th day of February, 1914, aforesaid, imprisoned in the county jail of said County.

Your petitioner further showeth that the said J. W. Perry is the Sheriff of Columbia County, Florida, and that the said J. W. Perry, as Sheriff aforesaid, now detains, confines, imprisons, and

deprives of his liberty your Petitioner by virtue of the aforesaid sentence of the County Judge of Columbia County, Florida.

Your petitioner further showeth that the aforesaid detention, confinement, imprisonment, and deprivation of your petitioner's liberty are illegal, unlawful, unjust, and contrary to and without authority of law, in that your petitioner has not violated any law of the State of Florida; and in that the alleged law under which, your petitioner is advised, he was sentenced as aforesaid is void and unconstitutional.

Wherefore, and by reason of the premises, your petitioner respectfully prays that your Honor shall allow and grant to him the gracious writ of Habeas Corpus, to be directed to the said J. W. Perry, as Sheriff of Columbia County, Florida, aforesaid, requiring and commanding him to forthwith produce the body of your petitioner before your Honor, together with the cause of your petitioner's detention and imprisonment aforesaid, and to do, submit to and receive the order of this Court in your petitioner's behalf.

C. C. HOWELL,
Attorney for Petitioner.

On this day personally appeared before me, C. C. Howell, who, being sworn, deposes and says that he is the attorney for the petitioner in this cause, and that the foregoing petition, and each and every allegation thereof, is true; that a copy of the sentence of the Court mentioned in the said Petition is at this time inaccessi-
3 ble to the petitioner or to his attorney.

C. C. HOWELL.

Sworn to and subscribed before me this 4th day of March, 1914.

M. F. HORNE,
Circuit Judge.

In Circuit Court, 3rd Judicial Circuit, of Florida in and for Columbia County.

JAKE BUTLER
vs.
J. W. PERRY, Sheriff, etc.

Habeas Corpus.

Before me personally came Jake Butler, who being first duly sworn, deposes and says that he has not property or means to pay costs in proceedings of habeas corpus and can not, and is unable to give bond for payment of same.

his
JAKE x BUTLER.
mark.

Sworn to and subscribed before me this 28th day of February, 1914.

[SEAL.]

W. M. IVES,
County Judge.

On the 5th day of March, 1914, writ of Habeas Corpus issued in the words and figures following:

In the Circuit Court of 3rd Judicial Circuit of Florida in and for Columbia County.

JAKE BUTLER, Petitioner,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida, Dft.

4 In the Name of the State of Florida to J. W. Perry, Sheriff of Columbia County, Florida, Greeting:

Whereas, It has been made to appear by the petition of Jake Butler that you illegally detain him in your custody:

These are therefore to command you to bring the body of the said Jake Butler before the undersigned Judge of our Circuit Court, at Jasper, Florida, at 9:30 o'clock on the 12th day of March, 1914, together with your authority for his detention, and that you then and there make due return hereon under penalty of the law.

This 5th day of March, 1914.

M. F. HORNE,
Circuit Judge.

On the 12th day of March, 1914, return on writ of Habeas Corpus was made, in the words and figures following:

In obedience to the order of the Court I have the body of Jake Butler before the Court and make this, my return, on this writ. I hold the said Jake Butler under a commitment issued out of the County Judge's Court of Columbia County, Florida, and hereto attached as a part of this return.

March 12th, 1914.

J. W. PERRY,
Sheriff, Columbia Co., Fla.

Commitment (to serve sentence).

In County Judge's Court, State of Florida.

STATE OF FLORIDA
vs.
JAKE BUTLER.

In the Name of the State of Florida to the Sheriff or any Constable of said County:

Whereas, in this Court, Jake But- was upon the 28 day of Feb, A. D. 1914, tried and convicted of the offence of road defaulter, and, whereas, on the 28 day of Feb'y A. D. 1914, he, the said Jake Butler, was sentenced by this Court as follows, to-wit: to
5 pay a fine of $5 and cost taxed at $16.05, and in default he be confined thirty days in jail under County Commissioners of Columbia County, Florida.

You are therefore commanded forthwith to convey the said Jake

Butler to the County jail of said County and deliver him to the keeper thereof, who is hereby required to receive the said Jake Butler into said jail and safely keep him until the judgment of this Court is satisfied or he be thence discharged by due course of law.

Given under my hand and seal this 28 day of Feb. A. D. 1914.

[SEAL.] W. M. IVES. [SEAL.]
County Judge.

On the 12th day of March, 1914, petitioner filed before the Circuit Judge his motion to Quash the return on the writ of Habeas Corpus and to Discharge the Petitioner, in the words and figures following:

In the Circuit Court of the Third Judicial Circuit of Florida in and for Columbia County.

JAKE BUTLER, Petitioner,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida, Defendant.

Habeas Corpus.

Comes now the Petitioner, Jake Butler, by his undersigned attorney, and moves the Court to quash the return upon the writ of habeas corpus herein, and to discharge the petitioner, and assigns, upon said motion, the following several grounds:

1. The statute upon which the prosecution of this petitioner was based, and under which statute he was sentenced and committed as stated in the said return, to-wit, Sections 10 and 12 of Chapter 6537 of the Laws of Florida (Laws of 1913, p. 469) is unconstitutional and void for the following reasons and in the following particulars, to-wit:

6 (A) The said statute is violative of and contrary to the 14th amendment to the Constitution of the United States, in that it denies to this petitioner the equal protection of the laws.

(B) The said statute is violative of and contrary to the 14th amendment to the Constitution of the United States, in that it deprives this petitioner of his liberty without due process of law.

(C) The said statute is violative of and contrary to Section 19 of the Declaration of Rights of the State of Florida, in that it subjects this petitioner to involuntary servitude, not as a punishment for crime whereof this petitioner has been duly convicted, and for a like reason, the said statute is violative of and contrary to the 13th amendment to the Constitution of the United States.

(D) The said statute takes the property of this petitioner without just compensation, and without due process of law, and is violative of and contrary to Section 12 of the Declaration of Rights of the State of Florida, and in that it deprives this petitioner of his property without due process of law, is violative of and contrary to the 14th Amendment to the Constitution of the United States.

C. C. HOWELL,
Attorney for Petitioner.

On the 12th day of March, 1914, the Court, after due notice given, made the following order upon such Motion:

This cause came on to be heard upon the foregoing motion, was argued by counsel, and, upon consideration, it is ordered by the Court that said motion be, and the same is hereby overruled, to which ruling the plaintiff excepted, and his exceptions are hereby noted.

Done and ordered at Jasper, in Chambers, this March 12th, 1914.

M. F. HORNE, *Judge.*

7 On the 12th day of March, 1914, petitioner filed with the Circuit Judge his Replication to the Return on the writ of Habeas Corpus, in the words and figures following:

In Circuit Court, 3rd Judicial Circuit, of Florida in and for Columbia County.

JAKE BUTLER, Petitioner,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida, Defendant.

Habeas Corpus.

Comes now the Petitioner, by his undersigned attorney, and, by leave of court first had and obtained, replies unto the return of the Sheriff herein this day made upon the writ of Habeas Corpus in this cause, and for replication thereunto says: That the said commitment filed with and as a part of said return is based upon an affidavit which states no crime known to the laws of the State of Florida, as will more fully appear from and by a certified copy of the said affidavit herewith filed and attached, and hereby made a part of this replication.

This 12th day of March, 1914.

C. C. HOWELL,
Att'y for Petitioner.

STATE OF FLORIDA,
Columbia County:

Before me personally came H. C. Parker who being duly sworn, says that on the 5 day of Feb. A. D. 1914, in the county aforesaid, one Jake Butler being duly summoned to work on the Lake City and Troy public road failed to work as required by statute, contrary to the statute.

H. C. PARKER.

Sworn and subscribed to before me this 14 day of Feb. A. D. 1914.

8

W. M. IVES, [SEAL.]
County Judge.

I certify foregoing is a true and correct copy of original in my office filed in the case tried Feb. 28, 1914.

Witness my hand and seal of office at Lake City, Fla., March 12, 1914.

[SEAL.] W. M. IVES,
County Judge.

Endorsed: In County Judge's Court, Columbia County, Fla. State of Fla. vs. Jake Butler. Affidavit. W. M. Ives, County Judge.

On the 12th day of March, 1914, the defendant made and filed with the Court his motion to remand the petitioner to the custody of the Sheriff.

On the 13th day of March, 1914, the Court made the following order upon the defendant's motion to Remand:

In Circuit Court, 3rd Judicial Circuit, of Florida in and for Columbia County.

JAKE BUTLER
vs.
J. W. PERRY.

Habeas Corpus.

This cause came on to be heard was argued by counsel, and upon consideration of the motion of the defendant to remand the plaintiff it is ordered by the Court that the plaintiff be and he is hereby remanded to the custody of the Sheriff. That Columbia County pay the cost of this proceeding. That the plaintiff
9 be and he is hereby awarded and allowed a writ of error to the Supreme Court of Florida returnable in 35 days. That the plaintiff's supersedeas bond be and the same is hereby fixed at $125.00 to be given and conditioned according to law, and upon bond being approved by the Clerk of this Court it is ordered that the plaintiff be discharged from custody pending such appellate proceeding.

Done, ordered, and adjudged at Jasper, Florida, this March 13th, 1914.

M. F. HORNE,
Circuit Judge.

On the 20th day of March, 1914, the petitioner filed his præcipe with the Clerk of the Circuit Court of Columbia County, for writ of error, in the words and figures following:

In the Circuit Court of the Third Judicial Circuit of Florida in and for Columbia County.

JAKE BUTLER, Petitioner,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida, Defendant.

Habeas Corpus.

Præcipe for Writ of Error.

The motion of the above named Petitioner to quash the return of the above named defendant upon the writ of habeas corpus herein, and to discharge the said petitioner, having been denied by the Court aforesaid on the 12th day of March, 1914, and the motion of the defendant to remand the Petitioner to the custody of the above named defendant, Sheriff, having been granted by the Court aforesaid on the 13th day of March, 1914, and the said Petitioner having been awarded and granted a writ of error herein by the Judge of the Court aforesaid, upon motion of the above named petitioner, Jake Butler, by his undersigned attorney, the Clerk of the Court aforesaid will please issue a writ of error in the above entitled cause, returnable to the Supreme Court of the State of Florida, on the 17th day of April, 1914, to review
10 the judgments aforesaid, of the Circuit Court aforesaid, dated March 12th, 1914, and March 13th, 1914, respectively.

C. C. HOWELL,
Attorney for Petitioner.

March 17th, 1914.

On the 20th day of March, 1914, writ of error issued, which was duly recorded in the minutes of the Circuit Court in Book 6 at page 171, on the 20th day of March, 1914.

The record of said writ of error is in the words and figures following, to-wit:

STATE OF FLORIDA, *ss:*

The State of Florida to the Judge of the Circuit Court of the Third Judicial Circuit of the State of Florida, Greeting:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our said Circuit Court before you, between Jake Butler as Plaintiff, and J. W. Perry, as Sheriff of Columbia County, Florida, as Defendant, manifest error hath happened, as it is said, to the great damage of the said Jake Butler as by his complaint appears,

We, willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein rendered, you distinctly and openly send the record and proceedings aforesaid with all things touching them, under your seal, together with this writ, to our Supreme Court of the State of Florida, so

that you have the same at Tallahassee on the 17th day of April, A. D. 1914, in our said Supreme Court to be then and there held, that inspecting the record and proceedings aforesaid, our Supreme Court may cause further to be done therein, to correct that error, what of right and according to law should be done. Witness the Honorable Thomas M. Shackleford Chief Justice of the said Supreme Court, and the seal of the said Circuit Court, this 20th day of March in the year — Lord one thousand nine hundred and fourteen.

[Seal of Circuit Court.]

11 J. L. MARKHAM,
Clerk of the Circuit Court of Columbia County.

On the 20th day of March, 1914, the petitioner filed his praecipe with the Clerk of the Circuit Court of Columbia County, for scire facias ad audiendum errores, in the words and figures following:

In the Circuit Court of the Third Judicial Circuit of Florida in and for Columbia County.

JAKE BUTLER, Petitioner,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida, Defendant.

Habeas Corpus.

The Clerk of the Court aforesaid will please issue a scire facias ad aud. errores in the above entitled cause, directed to the above named defendant, J. W. Perry, and returnable with the writ of error in this cause, to-wit, the 17th day of April, 1914.

This March 17th, 1914.

C. C. HOWELL,
Attorney for Petitioner.

On the 20th day of March, 1914, Scire Facias ad Audiendum Errores issued, in the words and figures following:

THE STATE OF FLORIDA:

To the Sheriff of the Supreme Court of said State, Greeting:

Whereas, on the petition of Jake Butler alleging that in the record and proceedings, and also in the rendition of judgment in a certain cause in the Circuit Court of our Third Judicial Circuit, in and for Columbia County, between Jake Butler as plaintiff, and J. W. Perry, as Sheriff of Columbia County, Florida, as defendant, manifest error hath happened, to the great damage of the said Jake Butler, a writ of error hath been awarded that our Supreme Court, having inspected the record and proceedings afore-
12 said, may cause to be done therein to correct that error what of right and according to law should be done.

Therefore, we command you, that you make known to the said J. W. Perry, as Sheriff of Columbia County, Florida, that he be before our said Supreme Court at the city of Tallahassee on the 17th day of April, A. D. 1914, then and there to hear the record and proceedings aforesaid and the errors assigned, if to him it shall seem expedient, and further to do, and receive, what our said Court shall in that behalf consider, and have you then and there this writ.

Witness the Honorable Thomas M. Shackleford Chief Justice of the said Supreme Court and the seal of the said Circuit Court this 20th day of March, in the year of our Lord one thousand nine hundred and fourteen.

[Seal of Circuit Court.]

J. L. MARKHAM,
Clerk of the Circuit Court of Columbia County.

On the 20th day of March, 1914, service of the scire facias ad audiendum errores was had upon the defendant, in the words and figures following:

I hereby accept service on the within scire facias this 20th day of March, 1913.

J. W. PERRY,
Sheriff Col. Co., Fla.

The written directions to the Clerk for making up the transcript of the record and application therefor, was filed with the Clerk of the Circuit Court of Columbia County, Florida, on the 25th day of March, 1914, in the words and figures following:

In the Circuit Court of the Third Judicial Circuit of Florida in and for Columbia County.

JAKE BUTLER, Petitioner,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida, Defendant.

Habeas Corpus.

13 In the above entitled cause, the Clerk of the said Court will please begin making up the Transcript of Record for the Supreme Court of Florida, on the 30th day of March, 1914; and in making up the said Transcript, the said Clerk will please observe the following instructions.

1. Copy Petition for Habeas Corpus, filed before the Judge of said Court on March 5th, 1914.

2. Copy the writ of Habeas Corpus, issued March 5th, 1914.

3. Copy return on writ of Habeas Corpus, dated March 12th, 1914.

4. Copy Motion to Quash Return on writ of Habeas Corpus and to Discharge Petitioner, made March 12th, 1914.

5. Copy order of the Court overruling motion to Quash Return on writ of Habeas Corpus and to Discharge Petitioner, rendered March 12th, 1914.

6. Copy Replication to Return on Writ of Habeas Corpus, with original affidavit attached, filed before Judge of the said Court, March 12th, 1914.

7. Recite Defendant's motion to Remand Petitioner, made March 12th, 1914.

8. Copy order of the Court remanding Petitioner, rendered March 13th, 1914.

9. Copy Præcipe for Writ of Error.

10. Copy Writ of Error.

11. Copy Præcipe for Scire Facias ad aud. errores.

12. Copy Scire Facias ad aud. errores.

13. Copy assignment of errors.

14. Copy these Directions to Clerk.

This March 17th, 1914.

C. C. HOWELL,
Attorney for Petitioner.

Due and legal service of a true and correct copy of the foregoing directions to the Clerk to be observed by him in the making
14 up of the Transcript of the Record is hereby accepted, this the 19th day of March, 1914.

And I, the undersigned, do hereby agree and consent that the Clerk of the said Court may begin the making up of the Transcript of Record in this cause, on the above named date of March 30th, 1914.

STAFFORD CALDWELL,
State Attorney, Third Judicial Circuit of Florida.

The assignment of errors presented to the Clerk at the time of applying for the transcript of the record is in words and figures following:

In the Circuit Court of the Third Judicial Circuit of Florida in and for Columbia County.

JAKE BUTLER, Petitioner,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida, Defendant.

Habeas Corpus.

Assignment of Errors.

Comes now the Petitioner, by his undersigned attorney, and assigns the following errors upon which he intends to rely in the Supreme Court of the State of Florida, for a reversal of the judgments and orders entered against him in this cause:

1. The Court erred in overruling Petitioner's Motion to Quash the Return of the defendant upon the Writ of Habeas Corpus herein and to Discharge the Petitioner.

2. The Court erred in remanding the Petitioner to the custody of the Sheriff.

This March 17th, 1914.

C. C. HOWELL,
Attorney for Petitioner.

15 I, J. L. Markham, Clerk of the Circuit Court in and for the County of Columbia, State of Florida, do hereby certify that the foregoing pages numbered from one to fourteen, inclusive, contain a correct transcript of the record of the judgment in the case of Jake Butler, Plaintiff, against J. W. Perry, Sheriff of Columbia County, Florida, Defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files in my office, that have been directed to be included in said transcript by the written demands of the said parties.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 3rd day of April, 1914.

[SEAL.] J. L. MARKHAM,
Clerk of the Circuit Court for the County of Columbia.

On the 28th day of April, A. D. 1914, the judgment of the Supreme Court of the State of Florida, in the case of Jake Butler, plaintiff in Error, vs. J. W. Perry, as Sheriff, Defendant in Error, was rendered in the words and figures following:

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, as Sheriff, Defendant in Error.

A Writ of Error to a Judgment of the Circuit Court within and for the County of Columbia.

This cause having been submitted to the court at a former day of this term upon the transcript of the record of the judgment of the record aforesaid, and argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the
16 premises, it seems to the court that there is no error in the said judgment; it is therefore considered, ordered and adjudged by the court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered by the court that the defendant in error do have and recover of and from the plaintiff in error his costs by him in this behalf expended, which costs are taxed at the sum of $—, all of which is ordered to be certified to the court below.

On the same day, to-wit, the 28th day of April, A. D. 1914, the opinion of the Supreme Court was filed in the words and figures following:

17 In the Supreme Court of Florida, January Term, A. D. 1914, Columbia County.

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, as Sheriff, Defendant in Error.

Habeas Corpus.

WHITFIELD, *J.*:

Jake Butler was convicted in the court of the County Judge for Columbia County upon an affidavit charging that he "being duly summoned to work on the Lake City and Troy public road failed to work as required by statute, contrary to statute." He was sentenced to pay a fine of $5.00, or in default thereof to imprisonment for thirty days.

In habeas corpus proceedings based upon the propositions that the affidavit is fatally defective and that the statute under which the conviction was had is unconstitutional, the petitioner was remanded to custody. A writ of error was duly allowed and taken. It is contended here that the affidavit wholly fails to allege a crime; that the title of the statute, Chapter 6537, does not cover the sections of the statute under which the petitioner was convicted; and that the stated sections violate the following provisions of the organic law: "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken without just compensation." Secs. 12 and 19 Declaration of Rights, State Constitution. "Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party has been duly convicted, shall ever be allowed in this State." "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall ever exist
18 within the United States, or any place subject to their jurisdiction." Sec. 1, Art. XIII, Amendments to Federal Constitution. "No State shall * * * deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Sec. 1, Art. XIV, Amendments to Federal Constitution.

The affidavit does not entirely fail to allege an offense under the statute, so as to make the conviction wholly without authority of law as in Ex parte Bailey, 39 Fla. 734, 23 South. Rep. 552, and Lewis v. Nelson, 62 Fla. 71, 56 South. Rep. 436. See 66 Fla. 335.

The contention that the affidavit is fatally defective in that it does not allege that the accused was not exempt from the duties imposed by the statute, is not tenable, since the exemptions are not a part of the definition of the statutory offense; and if the accused is entitled to the benefit of any one of the exemptions, it could have been presented as a defense. Baeumel v. State, 26 Fla. 71, 7 South. Rep. 371; Ferrell v. State, 45 Fla. 26, 34 South. Rep. 220.

The title, and sections 10, 11 and 12 of Chapter 6537, are as follows:

"An Act to Provide for the Method and Manner of Opening, Establishing, Building, Constructing, and Maintaining Public Roads and Bridges in the State of Florida, and to Provide a Road and Bridge Fund for the Several Counties in the State of Florida, and for the Assessment and Collection of Same.

Sec. 10. Every able-bodied male person over the age of twenty-one years, and under the age of forty-five years, residing in said County for thirty days or more continuously next prior to the date of making of the list by the Board of County Commissioners, or the date of the summons or notice to work, shall be subject, liable and required to work on the roads and bridges of the several Counties for six days of not less than ten hours each in each year when summoned so to do, as herein provided; that such persons so subject to road duty may perform such services by an able-bodied substitute over the age of eighteen years, or in lieu
19 thereof may pay to the road overseer on or before the day he is called upon to render such service the sum of three dollars, and such overseer shall turn into the County Treasury of his County any and all moneys so paid to him, the same to be placed to the credit of the road and bridge fund and subject to the order of the Board of County Commissioners for road and bridge purposes; and Provided, further, That all moneys collected in lieu of road duty shall be expended by the Board of County Commissioners upon the public roads and bridges in the sub-division where such road duties should have been performed.

Sec. 11. All persons who shall have lost a limb, or shall be incapacitated from earning a livelihood by physical disability, by ordinary manual labor, which disability shall be of such character as to disable them at all times from so earning a livelihood by manual labor, persons of unsound mind, and ministers in charge of a church, and persons who shall have performed their full proportion of road work in any other County or district or road sub-division, and persons who shall have been previously exempted by reasons of having reached the age of forty-five years, and residents of an incorporated city or town shall be exempted from road duty under the provisions of this act.

Sec. 12. Any person or persons not exempt as aforesaid who shall fail to work on public roads of the several Counties when required to do so, or to provide a substitute as herein provided, and shall neglect or refuse to make payment for the same, as hereinbefore provided shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned in the County jail for not longer than thirty days."

Section 16, Article III of the Constitution provides that "Each law enacted in the legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title."

While the title of an act is by the constitution required to briefly express the subject of the enactment, it need not state matters properly connected with such subject that are embraced in the body of the law; and the language used in expressing the subject
20 of the enactment is within the legislative discretion. If the language of the title considered with reference to the legislative intent as shown by the purpose and object of the act, may by any fair intendment cover the subject of the act, the courts will not because of an asserted defective title refuse to give effect to any matter contained in the body of the enactment that is germain to or properly connected with the subject of the law, where the title is not so worded as to mislead an ordinary mind as to the real purpose and scope of the particular enactment. A wide latitude must of necessity be accorded the legislature in its enactments of law; and it must be a plain case of violating the requirements of the organic law as to titles of acts before the courts will nullify statutes or portions thereof as not being within the purpose and scope of the subject as expressed in the title and of "matter properly connected therewith." If the title of an act fairly gives notice of the subject of the act so as to reasonably lead to an inquiry into the body thereof, it is all that is necessary. The title need not be an index to the contents of the act. The subject of the act here considered is the method and manner of providing public roads and bridges, and sections 10, 11 and 12 seeking to make the act effective are not clearly and undoubtedly outside of, but are included within, the subject and matters germain thereto or properly connected therewith. See State v. Bethea, 61 Fla. 60, 55 South. Rep. 550; State ex rel. Moodie v. Bryan, 50 Fla. 293, 39 South Rep. 929; Campbell v. Skinner Mfg. Co. 53 Fla. 632, 43 South. Rep. 874; Hayes v. Walker, 54 Fla. 163, 44 South. Rep. 747; State ex rel. Turner v. Hocker, 36 Fla. 358, 18 South. Rep. 767; State v. Closser, Ind. 99 N. E. Rep. 1057; State v. Grier, — Del. —, 88 Atl. Rep. 579.

While the sections of the Declaration of Rights of the State Constitution and the 13th and 14th Amendments to the Federal Constitution above quoted may be effective without further legislation on the subjects covered by the organic provisions, such sections are not intended to interfere with the enactment and enforcement of State laws where substantial private rights are not arbitrarily
21 invaded. The organic provisions relating to "involuntary servitude" are not applicable where a person has been convicted of a crime as is the case here. The statute above quoted does not impose arbitrarily unequal or oppressive burdens or require imprisonment except upon conviction in due course of law for the violation of a provision making it a misdemeanor to fail to perform a public duty in maintaining the public highways in pursuance of a statute enacted under the police power of the State.

No question of excessive or arbitrary punishment is presented.

In criminal prosecutions the organic guarantees of due process of law are satisfied where sufficient notice of the accusation and an adequate opportunity to defend are afforded in a proper tribunal on a charge made under a valid statute as in this case. Rogers v.

Peck, 199 U. S. 425, 26 Sup. Ct. Rep. 87; Garland v. Washington, — U. S. —, 34 Sup. Ct. Rep. 456.

The sections of the statute here assailed make the failure to perform a public duty a misdemeanor, and in doing so it does not deny due process of law or take property without compensation. Such a regulation is clearly within the province of the lawmaking power of the State, and the enactment does not appear to — an arbitrary exercise of governmental power that invades the private rights of persons affected by it. See Mashburn v. State, 65 Fla. 470, 62 South. Rep. 586. Uncompensated obedience to laws duly enacted in the valid exercise of the police power is not a taking of property without due process of law, or without compensation. See New Orleans Gas Light Co. v. Drainage Commission of New Orleans, 197 U. S. 453, 25 Supt. Ct. Rep. 471. Where the power to enact a statute appears, its expediency is determined not by the courts but the legislature in enacting the statute. See McLean v. State of Arkansas, 211 U. S. 539, 29 Sup. Ct. Rep. 206; Jacobson v. Massachusetts, 197 U. S. 11, 25 Sup. Ct. Rep. 358. The classifications and exceptions contained in the statute are legislative determinations, and they are not clearly without reasonable basis in practical differences of a substantial and just nature, but on the contrary appear to be justified. See Patsone v. Pennsyl-
22 vania, — U. S. —, 34 Sup. Ct. Rep. 281; Adams v. City of Milwaukee, 228 U. S. 572, 33 Sup. Ct. Rep. 610. For authorities on the subject of equal protection of the laws see Dutton Phos. Co. v. Priest, decided at this term. The statute in this case is wholly different from those considered in Toone v. State, — Ala., —, 59 South. Rep. 665, 42 L. R. A. (N. S.) 1045, and in Bailey v. State of Alabama, 219 U. S. 219, 31 Sup. Ct. Rep. 145.

The judgment remanding the petitioner is affirmed.

Shackleford, C. J., and Taylor, Cockrell and Hocker, JJ., concur.

23 On the 19th day of May, A. D. 1914, a petition for rehearing was filed by counsel for plaintiff in error, in the words and figures following:

In the Supreme Court of Florida, January Term, A. D. 1914.

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, as Sheriff of Columbia County, Florida, Defendant in Error.

Petition for Rehearing.

Comes now the above named Jake Butler, Plaintiff in Error, by his undersigned attorney, and files this, his petition for a rehearing; and thereupon petitioner would respectfully show unto this honorable Court that the court has omitted to consider and determine the following questions proper to be adjudicated on this writ of error, to-wit:

1. This court has omitted to consider or determine whether or not Section 10 of Chapter 6537 of the Laws of Florida imposes involuntary servitude upon this petitioner.

3. This court has omitted to consider or determine whether or not the provisions of Chapter 6537 requiring this petitioner to work on the public roads of Columbia County upon being summoned by the road overseer, deprive this petitioner of his liberty and property without due process of law.

Respectfully submitted,

C. C. HOWELL,
Attorney for Plaintiff in Error.

May 19th, 1914.

24 On the 19th day of May, A. D. 1914, the Supreme Court made an order, denying the petition for rehearing in the words and figures following:

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, as Sheriff of Columbia County, Florida, Defendant in Error.

A petition for rehearing having been filed in this cause by counsel for plaintiff in error, and the same having been duly considered, it is ordered and adjudged by the court that the prayer of said petition be and the same is hereby denied.

25 In the Supreme Court, State of Florida, *ss:*

I, M. H. Mabry, Clerk of the Supreme Court, State of Florida, do hereby certify that the foregoing pages, numbered from One to Twenty-four, inclusive, are a true, full and complete transcript of the record of the proceedings in the case of Jake Butler, Plaintiff in Error, versus J. W. Perry, as Sheriff, Defendant in Error; and also of the Judgment and Opinion of said Court, petition for rehearing and Order thereon, rendered in said cause, as the same now appears on file and of record in my office in Tallahassee, Florida;

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Tallahassee, Florida, the Capital of said State, this, the Twentieth day of June, A. D. One Thousand Nine Hundred and Fourteen.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk Supreme Court of the State of Florida.

26 In the Supreme Court of United States, January Term, A. D. 1914.

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, as Sheriff of Columbia County, Florida, Defendant in Error.

Assignment of Errors.

Comes now the above named Jake Butler, plaintiff in error, by his undersigned attorney, and avers and shows that the Supreme Court of Florida in the record and proceedings herein erred to the grievous injury and wrong of the plaintiff in error and to the prejudice and against the right of the plaintiff in error in the following particulars, to-wit:

1. The Court erred in holding that Sections 10 and 12 of Chapter 6537, Acts of 1913, of the Laws of Florida do not impose involuntary servitude upon the plaintiff in error, not as a punishment for crime, in violation of the 13th Amendment to the Constitution of the United States.

2. The Court erred in holding that Sections 10 and 12 of Chapter 6537, Acts of 1913, of the Laws of Florida do not deprive the plaintiff in error of his liberty without due process of law, in violation of the 14th Amendment to the Constitution of the United States.

3. The Court erred in holding that Sections 10 and 12 of Chapter 6537, Acts of 1913, of the Laws of Florida do not deprive the
27 plaintiff in error of his property without due process of law, in violation of the 14th Amendment to the Constitution of the United States.

Wherefore, for these and other manifest errors appearing in the record, the said Jake Butler, plaintiff in error, prays that the judgment of the said Supreme Court of Florida be reversed and set aside, and held for naught, and that judgment be rendered for plaintiff in error, granting him his rights under the statutes and laws of the United States, and plaintiff in error also prays judgment for his costs.

JOHN S. MAXWELL,
Attorney for Plaintiff in Error.

27½ [Endorsed:] In the Supreme Court of United States. Jake Butler, Plaintiff in Error, vs. J. W. Perry, as Sheriff, Defendant in Error. Assignment of Errors. Filed June 2, 1914. J. H. Mabry, Clerk Supreme Court of Florida.

28 In the Supreme Court of Florida, January Term, A. D. 1914.

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, as Sheriff of Columbia County, Florida, Defendant in Error.

Petition for Writ of Error.

Now comes the above named Jake Butler, Plaintiff in Error, and says that on the 28th day of April, A. D. 1914 judgment in this cause was entered by this court against the plaintiff in error, and thereafter a petition for rehearing was filed, presented and considered on the 19th day of May, A. D. 1914 and denied by this court, whereupon said judgment became final; and that this court is the highest court in the State of Florida, and that no appeal lies from its judgment and decrees to any other court in said State. And that said Jake Butler was and is aggrieved in that in said judgment and proceedings heretofore in this case certain errors were committed to his prejudice; that this is an action of habeas corpus, and that the plaintiff in error claims that he has been deprived of his constitutional liberty contrary to the Constitution of the United States, and especially contrary to the Thirteenth and Fourteenth Amendments to the Constitution of the United States, all of which will more fully appear in detail in the Assignment of Errors herein filed.

29 Wherefore, the said Jake Butler prays that a writ of error may issue to the Supreme Court of the State of Florida for the correcting of the errors complained of, and that a duly authenticated transcript of the record proceedings and papers herein may be sent to the Supreme Court of the United States of America.

JOHN S. MAXWELL,
Attorney for Jake Butler.

Writ of Error allowed upon the execution of a bond by Jake Butler, plaintiff in error, with good and sufficient surety in the sum of Five Hundred Dollars, to the Governor of the State of Florida which, when approved, to act as supersedeas.

Date May 25th, 1914.

THOMAS M. SHACKLEFORD,
Chief Justice of Supreme Court of State of Florida.

29½ [Endorsed:] In the Supreme Court of Florida, January Term, A. D. 1914. Jake Butler, Plaintiff in Error, vs. J. W. Perry, as Sheriff, Defendant in Error. Petition for Writ of Error. Filed June 2, 1914. M. H. Mabry, Clerk Supreme Court of Florida.

30 *Copy of Bond.*

In the Supreme Court of Florida, January Term, A. D. 1914.

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, as Sheriff of Columbia County, Florida, Defendant in Error.

Supersedeas Bond.

Know all men by these presents, that we, Jake Butler, of the County of Columbia, State of Florida, and Guy C. Lang and C. A. Howell, as sureties, are held and firmly bound unto Park Trammell, Governor of the State of Florida, in the penal sum of Five Hundred ($500.00) Dollars, for the payment whereof, well and truly to be made, we hereby bind ourselves, our executors and administrators, jointly and severally by these presents.

Signed and sealed this 25th day of May, 1914.

Whereas, the above named Jake Butler, plaintiff in error, seeks to prosecute his writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Florida.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his writ of error to effect and answer all costs and damages that may be
31 adjudged, shall stand to and abide by all judgments rendered, if he shall fail to make good his plea, then this obligation to be void, otherwise to remain in full force and virtue.

his
JAKE x BUTLER. [SEAL.]
mark.
GUY C. LANG. [SEAL.]
C. A. HOWELL. [SEAL.]

Signed and sealed in presence of:
C. C. HOWELL.
THOS. J. SIMS.

STATE OF FLORIDA,
County of La Fayette:

On this day personally appeared before me, the undersigned authority Guy C. Lang and C. A. Howell, to me well known, who, being by me first duly sworn, say, each for himself, that he executed and signed the foregoing bond as surety thereon.

GUY C. LANG.
C. A. HOWELL.

Sworn to and subscribed before me, this 25th day of May, 1914.

THOS. J. SIMS,
Notary Public.

My Com. Exp. Jan. 8, 1916.

STATE OF FLORIDA,
La Fayette County:

On this day personally appeared before me, the under-
32 signed authority, Guy C. Lang, and C. A. Howell, who executed and signed the above foregoing bond, each to me well known, who, being by me first duly sworn, say, each for himself, that he is worth in property in this State, Five Hundred ($500.00) Dollars, over and above all his debts and liabilities, and all property exempt from forced sale under the Constitution and laws of the State of Florida.

GUY C. LANG.
C. A. HOWELL.

Sworn to and subscribed before me this 25th day of May, 1914.
THOS. J. SIMS,
Notary Public.

My Com. Exp. Jan. 8, 1916.

The above, foregoing bond is approved this 25th day of May, 1914.
THOMAS M. SHACKLEFORD,
Chief Justice of Supreme Court of State of Florida.

33 In the Supreme Court of United States, January Term, A. D. 1914.

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, as Sheriff of Columbia County, Florida, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the Supreme Court of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida, before you, at the January term of said court, on the 18th day of April, A. D. 1914, being the highest court of law or equity of the said State in which a decision could be had in the said suit wherein Jake Butler was plaintiff in error, and J. W. Perry as Sheriff of Columbia County, was defendant in error, wherein was drawn in question the validity of a statute of the State of Florida as in contravention of the Constitution of the United States, a manifest error has happened to the said Jake Butler as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties afore-
34 said in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly,

you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 28 day of May, A. D. 1914.

Done in the City of Jacksonville, and County of Duval, with the seal of the District Court of the United States for the Southern District of Florida.

[Seal District Court of the United States, Southern District of Florida.]

E. D. DODGE,
Clerk of the District Court of the United States for the Southern District of Florida.
By W. L. DEVOY, *Dep. Clk.*

Allowed by:
THOMAS M. SHACKLEFORD,
Chief Justice of the Supreme Court of the State of Florida.

34½ [Endorsed:] In the Supreme Court of United States. Jake Butler, Plaintiff in Error, vs. J. W. Perry, as Sheriff, Defendant in Error. Writ of Error. Filed June 2, 1914. M. H. Mabry, Clerk Supreme Court of Florida.

35 In the Supreme Court, State of Florida, *ss:*

I, M. H. Mabry, Clerk of the Supreme Court, of the State of Florida, do hereby certify that there was lodged with me, as such Clerk, on June 2nd, 1914, in the matter of Jake Butler, Plaintiff in Error, vs. J. W. Perry, as Sheriff, Defendant in Error.

1. The original Bond, of which a copy is herein set forth.

Two copies of the Writ of Error, as herein set forth, one for the defendant, and one filed in my office.

In testimony Whereof, I have hereunto set my hand and affixed the seal of said court, in my office, in Tallahassee, Florida, this, the 20th day of June, A. D. 1914.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk of the Supreme Court of the State of Florida.

36 In the Supreme Court of United States, January Term, A. D. 1914.

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, as Sheriff of Columbia County, Florida, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to T. F. West, Attorney General of the State of Florida, and J. W. Perry, Sheriff of Columbia County, Florida, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Florida, wherein Jake Butler was plaintiff in error, and J. W. Perry, as Sheriff of Columbia County, Florida, is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the chief justice of the Supreme Court of the State of Florida, this 25th day of May, 1914.

THOMAS M. SHACKLEFORD,
Chief Justice of the Supreme Court of the State of Florida.

37 Attest:

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk of the Supreme Court
of the State of Florida.

CITY OF ——,
County of ——:

—— —, 1914.

I, the undersigned Attorney General of the State of Florida, hereby acknowledge due service of the above citation.

T. F. WEST,
Attorney General of the State of Florida.

37½ [Endorsed:] In the Supreme Court of United States. Jake Butler, Plaintiff in Error, vs. J. W. Perry, as Sheriff, Defendant in Error. Citation. Filed June 2, 1914. M. H. Mabry, Clerk Supreme Court of Florida.

38 In the Supreme Court of United States, January Term, A. D. 1914.

JAKE BUTLER, Plaintiff in Error,
vs.
J. W. PERRY, Sheriff of Columbia County, Florida. Defendant in Error.

I, J. W. Perry, Sheriff of Columbia County, Florida, defendant in error in the above-styled cause do hereby acknowledge due and legal service upon me of the citation issued in the said cause, and do hereby acknowledge receipt of a true and correct copy of the said citation.

This June 2nd, 1914.

J. W. PERRY,
Sheriff of Columbia Co., Fla., Defendant in Error.

[Endorsed:] In the Supreme Court of the United States. Jake Butler, Plaintiff in Error, v. J. W. Perry, Sheriff, etc., Defendant in Error. Acknowledgement of Service of Citation.

39 UNITED STATES OF AMERICA,
Supreme Court of Florida, ss:

In obedience to the commands of the within writ, I hereby transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings of the within entitled cause, together with all things concerning the same.

In testimony Whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of Florida, this the 20th day of June, A. D. 1914, at Tallahassee, Florida, the Capital of said State.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk Supreme Court, State of Florida.

Cost of Suit.

Cost of the transcript of record.... $6.20

Paid by Plaintiff in Error.

M. H. MABRY, *Clerk.*

Endorsed on cover: File No. 24,281. Florida Supreme Court. Term No. 182. Jake Butler, plaintiff in error, vs. J. W. Perry, as sheriff of Columbia County, Florida. Filed June 27th, 1914. File No. 24,281.

16

No. 537 182

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1914.

JAKE BUTLER, PLAINTIFF IN ERROR,

vs.

J. W. PERRY, AS SHERIFF OF COLUMBIA COUNTY, FLORIDA, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES COOK HOWELL,
Attorney for Plaintiff in Error.

THE LAW REPORTER PRINTING COMPANY, 518 FIFTH STREET NORTHWEST, WASHINGTON, D. C.

INDEX.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1914.

JAKE BUTLER, PLAINTIFF IN ERROR,

vs.

J. W. PERRY, AS SHERIFF OF COLUMBIA COUNTY, FLORIDA, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of Case.

Jake Butler, the plaintiff in error, was convicted in the County Judge's Court of Columbia County, Florida, upon an affidavit charging that "he, being duly summoned to work on the Lake City and Troy public road, failed to work as required by statute." This affidavit was based upon Sections 10 and 12 of Chapter 6537 of the Laws of Florida (Acts of 1913, p. 4~~96~~, text, 474, 475), which sections are as follows:

> "Sec. 10. Every able-bodied male person over the age of twenty-one years, and under the age of forty-five years, residing in said county for thirty days or more continuously next prior to the date of making of the list by the Board of County Commissioners, or the date of the summons or notice to work, shall be subject, liable and required to work on the roads and bridges of the several counties for six days of not less than ten hours each in each year when summoned so to do,

as herein provided; that such persons so subject to road duty may perform such services by an able-bodied substitute over the age of eighteen years, or in lieu thereof may pay to the road overseer on or before the day he is called upon to render such service the sum of three dollars, and such overseer shall turn into the county treasury of his county any and all moneys so paid to him, the same to be placed to the credit of the road and bridge fund and subject to the order of the Board of County Commissioners for road and bridge purposes; and provided, further, that all moneys collected in lieu of road duty shall be expended by the Board of County Commissioners upon the public roads and bridges in the subdivision where such road duties should have been performed.

"Sec. 12. Any person or persons not exempt as aforesaid who shall fail to work on public roads of the several counties when required to do so, or to provide a substitute as herein provided, and shall neglect or refuse to make payment for the same, as hereinbefore provided, shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned in the county jail for not longer than thirty days."

Upon his conviction, Butler was sentenced to pay a fine of $5, or, in default thereof, to imprisonment for thirty days. Failing to pay this fine, he was, agreeably to the alternative sentence, imprisoned in the county jail of Columbia County.

Upon the prisoner's petition therefor a writ of habeas corpus was granted by the Circuit Judge of Columbia County, and upon a hearing thereof the petitioner was remanded to the custody of the sheriff of said county. A writ of error was duly allowed and taken to the Supreme Court of Florida, and the judgment of the Circuit Court below, remanding the petitioner to custody, was there affirmed. For a review of this final judgment of the State Supreme Court, the writ of error from this Court is prosecuted.

Assignment of Errors.

The errors assigned, and herein argued seriatim, are:

1. The Court erred in holding that Sections 10 and 12 of Chapter 6537, Acts of 1913, of the Laws of Florida, do not impose involuntary servitude upon the plaintiff in error, not as a punishment for crime, in violation of the Thirteenth Amendment to the Constitution of the United States.

2. The Court erred in holding that Sections 10 and 12 of Chapter 6537, Acts of 1913, of the Laws of Florida do not deprive the plaintiff in error of his liberty without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

3. The Court erred in holding that Sections 10 and 12 of Chapter 6537, Acts of 1913, of the Laws of Florida do not deprive the plaintiff in error of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

For convenience of treatment, the propositions embodied in these specifications of error are, in the ensuing argument, treated affirmatively.

ARGUMENT.

1. Sections 10 and 12 of Chapter 6537, Laws of Florida, Acts of 1913, impose involuntary servitude upon the plaintiff in error, not as a punishment for crime, in violation of the Thirteenth Amendment to the Federal Constitution.

The named sections (set out in extenso, ante, pp. 1, 2), provide that:

> "Every able-bodied male person over the age of twenty-one years, and under the age of forty-five years, . . . shall be subject, liable, and re-

> quired to work on the roads and bridges of the several counties for six days of not less than ten hours each in each year, when summoned so to do, as herein provided. . . . Any person . . . who shall fail to work on public roads of the several counties when required to do so . . . shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars, or imprisoned in the county jail for not longer than thirty days."

It is the contention of the plaintiff in error, under this assignment, that the quoted sections of the Florida statute are contrary to and violative of the guarantee of the Thirteenth Amendment that—

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall ever exist within the United States, or any place subject to their jurisdiction."

"Involuntary servitude" is defined to be "compulsory imprisonment at hard labor without pay."

> 23 Cyc., 352, citing Ex parte Wilson, 114 U. S., 417, 5 Sup. Ct. Rep., 935, 29 L. Ed., 89.

And the term naturally includes enforced labor.

> State *vs.* West, 42 Minn., 147, 43 N. W., 845.

Imprisonment occurs whenever a person is detained or deprived of the power of locomotion against his will. And the condition of a person compelled to do services for another is a condition of involuntary servitude.

> Thompson *vs.* Benton, 117 Mo., 83, 22 S. W., 863, 20 L. R. A., 462, 38 Am. St. Rep., 639.

In the famous Slaughter House Cases, 16 Wall., 69, 21 L. Ed., 406, this Court said:

> "While the 13th Amendment was primarily

> intended to abolish African slavery, yet it was broad enough to extend, and did extend to every form of involuntary servitude within the United States or its jurisdiction."

And in the Civil Rights' Cases, 109 U. S., 36, 27 L. Ed., 847, in discussing the relation of the amendment to State laws, the Court said:

> "This amendment is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable, to any existing state of circumstances. . . . The 13th Amendment may be regarded as nullifying all State laws which establish or uphold slavery."

It follows that the term "involuntary servitude" is a much more comprehensive term than "slavery"—or, in the words of the Court in the Slaughter House Cases, "the word 'servitude' is of larger meaning than slavery as the latter word is usually understood in this country and includes all shades and conditions of involuntary slavery, of whatever class or name"—and that any law, the purpose or effect of which is to impose involuntary servitude is fatally repugnant to this constitutional guarantee of liberty and freedom.

This Court had occasion to consider the Thirteenth Amendment again in the peonage cases, and upon the second of these occasions it explained the scope of the amendment as follows:

> ". . . While the immediate concern was with African slavery, the amendment was not limited to that. It was a charter of universal civil freedom for all persons, of whatever race, color, or estate, under the flag. The words involuntary servitude have a 'larger meaning than slavery.' The plain intention was to abolish slavery of whatever name and form and all its badges and incidents; *to render impossible any state of bondage*; to make labor free, by prohibiting

that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude. . . . By its own unaided force and effect it abolished slavery and established universal freedom. . . . The amendment is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States. . . . The act of March 2, 1867 (Rev. Stat., Sections 1990 and 5526, supra), was a valid exercise of this express authority. Clyatt *vs.* United States, 197 U. S., 207, 49 L. Ed., 726, 25 Sup. Ct. Rep., 429. It declared that all laws of any State, by virtue of which any attempt should be made 'to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any person as peons, in liquidation of any debt or obligation, or otherwise,' should be null and void . . . (This act) necessarily embraces all legislation which seeks to compel the service or labor by making it a crime to refuse or fail to perform it. Such laws would furnish the readiest means of compulsion. The 13th Amendment prohibits involuntary servitude except as punishment for crime. But the exception, allowing full latitude for the enforcement of penal laws, does not destroy the prohibition. It does not permit slavery or involuntary servitude to be established through the operation of the criminal law by making it a crime to refuse to submit to the one or to render the service which would constitute the other."

Bailey *vs.* Alabama, 219 U. S., 219, 31 Sup. Ct. Rep., 145.

And this Court's attention is respectfully, but most earnestly, urged to that part of the above quoted passages where it is said:

"The act of Congress nullifying all State laws, by which it should be attempted to enforce the

> 'service or labor of any persons as peons, in liquidation of any debt or obligation, or *otherwise*, necessarily embraces all legislation which seeks to compel the service or labor by making it a crime to refuse or fail to perform it." And, ". . . . The exception (contained in the amendment) *allowing full latitude for the enforcement of penal laws*, does not destroy the prohibition."

It is contended in this brief that the words, "or otherwise," in the act of March 2, 1867, embrace every "voluntary or involuntary service or labor of any person," except as a punishment for crime, just as the words "involuntary servitude," in the amendment, guarantee universal civil freedom for all persons;" in other words, that "or otherwise" prevents the statute from being a mere inhibition of peonage, or the enforcement of labor by an individual, and includes every form of compulsory labor not imposed as a punishment for crime—whether the compulsion be exercised by an individual, by a corporation, by the State itself, or by any means or manner whatsoever. If this be incorrect, it is difficult to see why the statute did not stop after condemning peonage, as, if it had, the statute would still apply to peonage.

What the State can not do under the guise of one attempted criminal law, it is submitted, it can not do under the mask of another law. The law here objected to attempts, just as did the Alabama labor contract law, to make it a crime "to refuse to submit to the one or to render the service which would constitute the other." Bailey case, supra. And, if the State "may not compel one man to labor for another in payment of a debt by punishing him as a criminal if he does not perform the service or pay the debt," how, without violating the Constitutional prohibition of involuntary servitude, can, paraphrasing the above quotation from the Bailey case, the State compel one man to labor for the State

by punishing him as a criminal if he does not perform the service?

This court must have had something like this in mind when it said in the Clyatt case, "This amendment (the 13th) denounces a status or condition, irrespective of the manner or authority by which it is created."

> Clyatt *vs.* United States, 197 U. S., 207, 49 L. Ed., 726, 25 Sup. Ct. Rep., 429.

This holding, it is most earnestly urged, is broad enough and just and sensible enough to absolutely preclude the holding of a man to involuntary servitude by any manner of means or any force or agency whatsoever—whether the manner or means or force or agency be a private individual, as in the Bailey and Clyatt cases, or whether it be the misplaced sovereignty of the State itself; and is, it is profoundly believed, a judicial substantiation by the highest court in the land of this petitioner's contention that the enforcement of Sections 10 and 12 of Chapter 6537, subject him to that involuntary servitude prohibited by the Thirteenth Amendment; and that it is no answer to say that this servitude is justifiable because imposed by the State. If the quoted excerpt from the Clyatt case does not mean that in *every* case of involuntary servitude the servitude itself or, as the Court said, the *status*, is the evil aimed at and prohibited by the amendment, and not the superior force or authority, which creates it, it means practically nothing, and its force in the decision is difficult to perceive.

Section 10 of the road labor law provides that the designated class shall be *liable* for *six days road duty* each year; and Section 12 provides a punishment by fine "or imprisonment . . . for not longer than thirty days." Now, suppose that the petitioner, upon failing to work, had been *sentenced* to *six days labor*? This would have

been, undoubtedly, involuntary servitude, *but* as a punishment for crime (presupposing for this purpose only that the law is valid); then, if he had obeyed Section 10, he would have done *exactly* the same work he would have done in serving the supposed sentence; and would have, naturally, been subjected to involuntary servitude *not* as a punishment for any crime whereof he had been duly convicted. If there be any distinction, except as above pointed out, between the quality or nature of the two servitudes he would, in each instance be forced to undergo, it is a distinction without a difference to the liberty and freedom of this petitioner. In both cases he would be "compulsorily imprisoned at hard labor without pay," and such imprisonment and labor without pay is the definition of involuntary servitude laid down by this Court in Ex parte Wilson, 114 U. S., 417, 5 Sup. Ct. Rep., 835, 29 L. Ed., 89.

And, in line with this argument, it is of no moment that in the instant case the petitioner was sentenced to thirty days. The *existence* of the involuntary servitude is the essence of the invalidity of the law, and not its duration. Clyatt *vs.* United States, supra. But if the duration thereof cuts any figure, it is likewise clear, we think, that the law must be condemned. For, if the State can appropriate six days of a man's labor, and liberty, and life, it can take to itself six weeks, six months, or six years, and so on without limit. And it is no answer to say that such an appropriation as supposed would be unreasonable; for it is well settled law that if an act of a Legislature be not clearly contrary to organic law, the Courts will not inquire into its reasonableness. And, on the other hand, if the length of labor that can conceivably be exacted of the citizen by the State is to be determined by the Court, where shall we fix the boundary line? Far better, it is submitted, will it be to absolutely prohibit the deprivation of liberty and the subjection to involuntary servitude condemned by the 13th amend-

ment and attempted by Chapter 6537, than to go on a pilgrimage into the shadow land of reasonableness and unreasonab'eness.

The practical consequence is the same to this petitioner, it is again earnestly submitted, whether he be forced to involuntary servitude under circumstances amounting to peonage, or whether under the circumstances contemplated and provided for by the 1913 road labor law. For in either case he becomes subjected to the involuntary servitude, and in both cases he has been convicted of no crime. And it is the *status* of involuntary servitude, and not the authority by or under which it is imposed that is forbidden, says the Clyatt case.

This argument now comes down to this point: if the Legislature can force this petitioner to labor on the public roads of the State six days, it can force his lawyer to practice for the State six days, or the physician to practice six days whenever so commanded by the sovereignty of the State. And, as argued hereinbefore, if the State could do these things, could it not appropriate to its own use the labor of every person within its borders for an indeterminate length of time? These suppositions differ from the law that the State is here seeking to enforce in degree only, and not in kind. And, as shown hereinafter (p. 25), the State, it has been held, can *not* enforce the gratuitous rendition to itself or to persons designated by it of an attorney's services. Then, how does it appear that it can force this petitioner to give of what labor *he* has?

Can Chapter 6537 be justified, as intimated in the opinion of the State Supreme Court, as a valid exercise of the police power? Upon the theory that the freedom of the citizen must be subordinate to the common good? If so, then we enter the field of reasonableness and unreasonableness again, and where shall we draw the line between them? As hereinbefore suggested, any law im-

posing the involuntary servitude condemned by the Supreme Law of the L nd is, because of that violation, "unreasonable;" and, it is respectfully submitted, should be declared void for this specific reason rather than waiting until it encroaches so far upon individual freedom as to become unreasonable as an unwarranted exercise of the police power.

We assert, however, that the police power must, in this case, as always, yield to the Constitution and can not rise above it. If it does, the Constitution ceases to be the supreme law of the land. State *vs.* Armstead (Miss.), 60 South., 778. And we likewise contend that a right constitutionally guaranteed can not "be imposed on or destroyed under the guise or device of being regulated."

Toney *vs.* State, 141 Ala., 120, 37 South., 332, 67 L. R. A., 286, 109 Am. St. Rep., 23, 3 Ann. Cas., 319.

Welton *vs.* Missouri, 91 U. S., 275.

Webber *vs.* Virginia, 103 U. S., 344.

Stone *vs.* Farmers' Loan & T. Co., 116 U. S., 307.

In re Tie Loy, 26 Fed., 611.

Definitions of the police power must, in the language of the Supreme Court of the United States—

> "be taken subject to the condition that a State can not, in its exercise, for any purpose whatever, encroach upon the powers of the general government, *or rights granted or secured by the supreme law of the land.*" (Italics supplied.)

New Orleans Gas Light Co. *vs.* Louisiana Light and Heat Co., 115 U. S., 650, 6 Sup. Ct. Rep., 252, 29 L. Ed., 516.

1 Bailey on Habeas Corpus, sec. 38.

See, also—

Henderson *vs.* Mayor, 92 U. S., 259.

Railroad Co. *vs.* Husen, 95 U. S., 465.

Or as said by this Court in discussing the commerce clause of the Federal Constitution in the recent case of Barrett *vs.* New York, 34 Sup. Ct. Rep., 203, text, 207:

> "It is insisted that under the authority of the State the ordinances were adopted in the exercise of the police power. But that does not justify the imposition of a direct burden upon interstate commerce. . . . A state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it."

And, in again emphasizing the exclusiveness of Federal power over interstate commerce, after citing numerous decisions explaining and applying the rule, Mr. Justice Holmes, speaking for the Court in Kansas City S. R. Co. *vs.* Kaw Valley Drainage Dist., 34 Sup. Ct. Rep., 564, said of these decisions:

> "The decisions also show that a State can not avoid the operation of this rule by simply invoking the convenient apologetics of the police power."

The plaintiff in error would apply this quotation to his case, and thereupon would submit that the State of Florida can not, under the convenient apologetics of the police power, avoid the operation of the rule that involuntary servitude, except as a punishment for crime, may not be imposed by any agency.

In the case of State *vs.* Julow, 125 Mo., 163, 31 S. W., 781, 29 L. R. A., 257, it was decided that a statute declaring that to be a crime which consists alone in the exercise of a constitutional right, is unconstitutional. The right of free labor, as opposed to compulsory labor under circumstances amounting to involuntary servitude, is a right guaranteed by the Thirteenth Amendment, yet the man who insists upon this guaranteed protection 365 days in the year, instead of 359, as contemplated by

Chapter 6537, the Legislature of Florida says, is a criminal! As said in the Julow case:

> "Here the law under review declares that to be a crime which consists alone in the exercise of a constitutional right;" (that of terminating a contract). . . . "But the fact as charged, as already seen, is not a crime, so long as constitutional guaranties and constitutional prohibitions are respected and enforced."

In contending that the Florida Legislature has passed a valid law in this Chapter 6537, it might be said, as was said of the Alabama labor contract law, when that law was upheld by the Alabama Court in Bailey *vs.* State, 49 South., 886, "the crime denounced is not one against the person or property of the employer, but one against the dignity of the State—against the sovereignty." But this argument and holding was disallowed when this Court considered the question—even the sovereign dignity of the State could not excuse, in the face of the Thirteenth Amendment, the holding of a man to involuntary servitude. And it is respectfully insisted that in our own case, even the sovereign State of Florida has no right nor power to hold this petitioner to the involuntary servitude to which he would necessarily be subjected in complying with the requirements of Section 10 of the law under discussion. If it does, it holds him in defiance, it is again, with respect, submitted, of the Thirteenth Amendment, and of the construction thereof laid down by the Federal Supreme Court in the Clyatt and Bailey cases.

It may be conceded, in this connection, that the maintenance of the public highways is a proper subject of the police power; and it may be considered for a moment (without, however, admitting in fact the truth of this last concession) that the public good requires the maintenance of the highways of the State by the labor system. But,

to quote Reed, J., in the Armstead case, supra (60 South. text, 781):

> "However, over and against this is the more important question of protecting the liberties and rights of the citizen. To permit an abridgement in this instance might lead to a more extended and serious interference. We must look at the general principles involved. They can not be confined to this State. . . . They are applicable to all American citizens. Through the provisions of the Constitutions they are intended to safeguard him in his life and liberty and the reasonable enjoyment and use of his property. There is no necessity by reason of the general welfare of the public sufficient to require that the rights of the individual shall yield, in this case, to the rights of the public. The police power of the State may be broad, but it can not rise above the Constitution. It can not justify the enactment of a law which amounts to an arbitrary and unwarranted interference with the rights of the citizens which are guaranteed by the Constitution. The citizens who would be liable to prosecution under this statute belong to the class of the humble and poor. Because they are among the weak of our people, it is no less important that they be protected in their rights and liberties."

In dealing with the question of involuntary servitude as raised and discussed in this section of the plaintiff in error's brief, the Supreme Court of Florida, in its opinion, says (66 South., 152):

> "While the sections of the Declaration of Rights of the State Constitution and the 13th and 14th Amendments to the Federal Constitution above quoted may be effective without further legislation on the subjects covered by the organic provisions, such sections are not intended to interfere with the enactment and enforcement of State laws where substantial private rights are not arbitrarily invaded. The organic provisions relating to 'in-

> voluntary servitude' are not applicable where a person has been convicted of a crime as is the case here. The statute above quoted does not impose arbitrarily unequal or oppressive burdens or require imprisonment except upon conviction in due course of law for the violation of a provision making it a misdemeanor to fail to perform a public duty in maintaining the public highways in pursuance of a statute enacted under the police power of the State."

But the definite and specific point presented by the first assignment of error is that the law of Florida under consideration *does* arbitrarily invade the substantial private rights of this plaintiff in error; that the forcing of a man to gratuitous service, even though it be by the State, creates a status of involuntary servitude, irrespective of his subsequent conviction of the so-called crime of refusing to render the free labor. And for the reason that this point is the gist of the contention, it is, with great respect, submitted that the quotation is a mere begging of the question raised.

There have been two prior cases dealing with laws providing for compulsory road duty decided by the Supreme Court of Florida; namely, Mashburn *vs.* State, 65 Fla., 470, 62 South., 586, and Galloway *vs.* Town of Tavares, 37 Fla., 58, 19 South., 170; but in neither of these was the question of involuntary servitude raised or considered.

In the Mashburn case, the points presented and decided were (1) that such laws do not impose a tax; (2) that such laws do not provide for imprisonment for debt; (3) that such laws do not render women liable to road duty.

In the Galloway case, it was, likewise, merely decided that such a law as we now have under consideration does not impose a tax. And the Court added, in citing a number of cases to substantiate this position, that in several

of them the requirement of labor upon the public highways, is considered to be "a public burden, and one put upon the same plane as the burdens of jury and militia duty." It is conceived that the quotation was added by way of explanation only; and, the Court did not, in this case, hold, even by way of *dicta*, that this was the true doctrine, and this point was neither before the Court for determination, nor determined by it.

It is submitted that the argument likening compulsory road duty to enforced jury and militia duty is illogical and unsound for the following reasons:

(1) Jurors and militia-men are paid for their services; they are not forced to "compulsory imprisonment at hard labor without pay," which is the essence of involuntary servitude, as is the citizen under Section 10 of Chapter 6537.

(2) The necessity of maintaining the public highways by the labor system—and especially where the tax system is also enforced—is of much less importance than is the administration of justice and the maintenance of the militia. We assert that even if the imposition of enforced road duty could ever be enforced on this analogous ground—but which we believe it could not be—the need and circumstances therefor should, at least approach the corresponding necessity for the existence of the jury and the militia.

(3) The road labor system is annual—six days for every man out of every year; while each man is forced to jury duty only occasionally, and, under the recent Florida law, never as often as once each year; and, militia duty is very rarely exacted of a citizen; most men never being forced to serve therein. The practical operation of the law should therefore be considered, we contend, as well as its theoretical purpose, adaptability and expedience.

(4) The analogy to our jury system is likewise unjust

and illogical for the reason that a prospective juror can, conceiveably, always escape service. For example, if he should, out of a disinclination to serve, confess or profess prejudice or bias he is thereupon discharged or "exempt;" from service under the compulsory road law there is, however, no excuse; (as opposed to exemption contained in the statute itself).

Whether, however, these four contentions be sound, we believe that the position taken by the plaintiff in error herein is absolutely sound and correct; we believe that when this Court said in the Clyatt case that the Thirteenth Amendment prohibiting slavery and involuntary servitude except as a punishment for crime was aimed at the *status* or *condition* of involuntary servitude irrespective of the *manner* or *authority* by which that status or condition is created, it meant just what it said; we believe that that is the supreme law of the land concerning the question in hand; we believe that if a set or conditions or circumstances creates involuntary servitude, that that servitude is utterly indefensible, whether it be like unto jury duty, militia duty, or no matter to what other duty. We believe that the State of Florida has no more authority to impose involuntary servitude than it has to prohibit or curtail the freedom, as opposed to license, of the press, than it has to regulate or burden interstate commerce, or than it has to encroach upon any other constitutional guarantee. And we do not believe that this case is an exceptional one like Robertson *vs.* Baldwin, 165 U. S., 275, 41 L. Ed., 715, 17 Sup. Ct. Rep., 326, for the reason that a seaman voluntarily enters that service, while the road worker, under the Florida statute, does not, and for the reason that there are overwhelming considerations why a sailor should not capriciously desert his employment and his ship, and there are no overwhelming reasons why a citizen should be forced to work on the roads.

It is worthy of note, at this point, to consider again the exact words of the Thirteenth Amendment, viz:

> "Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

The exception is "as a punishment for crime." And, naturally, no power can punish for crime except the State itself. Now, if the exception applies to the State and the State alone, the entire amendment must be directed *against the State itself*, and not against individuals only. The very definition of a crime insists that it be an offense against the State; if the amendment is applicable to "old-time" slavery and peonage only, why the necessity for the exemption? The slave owner had no power to, nor did he, punish for crime; he who forces another to labor in payment of a debt can not punish for crime. We submit, therefore, that the amendment prohibits, with a proper regard for the exception, of course, the imposition of involuntary servitude by any force, power, or authority, within the jurisdiction of the United States Constitution. And we believe this would be clear if the Clyatt case had never been decided.

We again submit that the police power can not encroach upon the right of free labor. And if this be possible we respectfully contend that it should not be allowed. We believe that the fine utterance of Blackstone in Bk. 1, No. 416, of his Commentaries, is as true now as it was then in 1758:

> "For the greater the general liberty in which any State enjoys, the more cautious has it usually been in introducing slavery in any particular order or profession."

And we venture to add that our general liberty today is greater than that ever enjoyed by any people, and the more cautious our State should be in introducing involuntary servitude and virtual slavery into that class set apart for such imposition by Section 10 of Chapter 6537 of our State law.

2. Sections 10 and 12 of Chapter 6537, Acts of 1913, Laws of Florida, p. 474, deprive the plaintiff in error of his liberty without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution.

Under this head of plaintiff in error's brief it is contended that the compulsory road duty required by the cited sections of the law contravene and are in irreconcilable conflict with the organic provision that:

> "No State shall . . . deprive any person of . . . liberty . . . without due process of law."

Section 10 of the Act of 1913 (Laws of Florida, Chapter 6537, p. 474) provides, in substance, that the therein designated persons shall be subject to road duty "when summoned so to do as herein provided." Section 3 of the Act, subdivisions 7 and 8, provides that:

> "Said overseer shall summon in writing . . . all persons liable to road duty residing in his subdivision. . . .
>
> "Such notice shall be in writing and may be served either by personal service or by leaving the notice at the place of residence of the person to be notified, with a member of his family over the age of twelve years."

> "While life and liberty are in question there must in every instance be judicial proceedings; and that requirement implies an accusation, a hearing before an impartial tribunal with proper jurisdiction, and a conviction and judgment before the punishment can be inflicted."
>
> Story on Const. (4th Ed.), Sections 1943 et seq.

In view of this definition of due process of law, it would seem to be almost self-evident that the requirement of the statute under consideration that one shall be deprived of his liberty upon a mere summons to work the road is obnoxious to the constitutional requirements upon which this objection is based. As shown next hereinbefore, the prisoner is equally deprived of his liberty whether he obeys the law and abides by the command of the summons, or whether he disobeys the law and is prosecuted, convicted, and sentenced therefor; in either case he is forced to involuntary physical labor. In the second instance he is, of course, if we presuppose the statute to be valid, imprisoned in accordance with due process of law. But in the first instance, there is no semblance of judicial proceedings; no accusation, no hearing, whether before an impartial tribunal or otherwise, no conviction or judgment, but an infliction of punishment, just as real and just as effective, and of the same consequences to one situated as is this petitioner, as is the punishment inflicted in the second instance. Certainly this is not the due process of law which "hear before it condemns, proceeds upon inquiry, and renders judgment only after trial." Nor does it come within the apt interpretation of Bronson, J., in Porter *vs.* Taylor (N. Y.), 4 Hill, 140:

> "The meaning of the section (the law of the land) seems to be that no member of the State shall be deprived of his rights and privileges unless the matter shall be adjudged against him upon trial had according to the course of the common law. It must be ascertained judicially that he has forfeited his privileges, or that some one else has a superior title to the property he possesses, before either of them can be taken from him."

The Supreme Court of Florida, in recently discussing

this constitutional guarantee, in Davis *vs.* Florida Power Co., 64 Fla., 246, 60 So., 759, used these words:

> "Due process of law is observed when the Governmental action taken is in substantial accord with the principles which require that the official or tribunal that undertakes or assumes to determine the rights of parties, . . . shall have jurisdiction or the right and power to act in the premises; that unless duly waived or not required, there shall be appropriate notice to and a reasonable opportunity for a full hearing given to the parties at some stage of the proceedings before final judgment or conclusive action is taken. . . . That the proceedings shall not violate any fundamental rights, and shall be in substantial compliance with general principles of law. . . . Ordinarily, due process of law is an observance of those general rules established in the law for the security of private rights."

This language is, apparently, an endorsement of Mr. Justice Story's explanation of the same fundamental right, supra, and thereupon it is again submitted that Section 10 of Chapter 6537, most palpably restrains this petitioner of his liberty without observing the first semblance of the requirements of Section 12 of the Declaration of Rights of our State Constitution, and, equally, of the Fourteenth Amendment to the Constitution of the United States.

The point hereunder sought to be raised and presented, namely, that the requirement of the statute (Section 10), that the citizen shall be subject and required to perform the designated labor upon the mere summons of the road overseer, is, of itself, without reference to the punishing section of the act (Section 12), obnoxious to the due process of law clause of the Federal Constitution, seem to have been overlooked or disre-

garded by the Supreme Court of Florida. For it says, in its opinion, 66 South., 152:

> "In criminal prosecutions the organic guarantees of due process of law are satisfied where sufficient notice of the accusation and an adequate opportunity to defend are afforded in a proper tribunal on a charge made under a valid statute as in this case. Rogers *vs.* Peck, 199 U. S., 425, 26 Sup. Ct. Rep., 87; Garland *vs.* Washington, 23 U. S., 642, 34 Sup. Ct., 456, 58 L. Ed., ——."

The plaintiff in error has no counter contention to this authority, but respectfully submits that the requirement of the statute under consideration that every male of the designated class shall be subjct to the designated road duty "when summoned so to do" (Section 10, Acts of 1913, p. 474) deprives the plaintiff in error of his liberty. This follows from the mere fact that he who is summoned according to the provisions of Section 3 of the Act (quoted supra), and *obeys* the summons is forced, under the threat of punishment provided for by Section 12 of the Act, to work, and by reason of such fear is deprived of his liberty. The sole question then is, we conceive, "Does the service of the summons constitute due process of law?" And in support of his contention that the service of the summons does not constitute due process of law, the plaintiff in error confidently, respectfully, refers the Court to the still increasing multitude of cases affirming and reapplying the classical definition of the phrase—

> "By the law of the land is clearly intended the general law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial."
>
> Dartmouth College *vs.* Woodward, 4 Wheat., 518, 4 L. Ed., 629.

3. Sections 10 and 12 of Chapter 6537, Acts of 1913, Laws of Florida, p. 474, deprive the plaintiff in error of his property without due process of law, in contravention of the Fourteenth Amendment.

In addition to the foregoing argument, under the second division of this brief, as to the applicability in this case of the organic requirement of "due process of law," as that requirement is judicially defined and interpreted, it is submitted that the cited portions of the Florida law deprive the plaintiff in error of his *property* without due process of law.

There can be no doubt that a man's labor is his property, just as any other material asset of value is property, whether it be wealth in the ordinary sense, or whether it be the foundation of wealth. The business of an attorney is his property, and he can not be deprived of it, unless by the judgment of his peers or the law of the land. Ex parte Steinman, 95 Pa., 220, 40 Am. Rep., 637. See, also, O'Hara *vs.* Stack, 90 Pa., 491. The word "property" as used in the provision of the Federal Constitution that no one shall be deprived of property without due process of law, includes labor.

In re Tiburcio Parrott, 1 Fed., 506.
In re Marshall, 102 Fed., 324.
Ritchie *vs.* People, 155 Ill., 98, 40 N. E., 462, 29 L. R. A., 79, 46 Am. St. Rep., 315.
Gillespie *vs.* People, 188 Ill., 176, 58 N. E., 1009, 80 Am. St. Rep., 176.

In his great work on economics Adam Smith says:

> "The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable."
>
> Wealth of Nations, bk. 1, Chap. 10, part 2.

This quotation occurs likewise in the opinion of the

Court in the Slaughter House Cases, 16 Wall., 69, 21 L. Ed., 406, and thereupon Swayne, J., adds:

> "The right of free labor is one of the most sacred and imprescriptible rights of man. . . . Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny. Property is everything which has an exchangeable value. . . . *Labor* is property, and as such merits protection."

Under this unanimous authority, therefore, the petitioner stands in this Court squarely upon the proposition that those sections of Chapter 6537 of the Laws of Florida providing for the compulsory labor system of working the highways of the State is invalid because it takes from him his labor which is his property, without a just or, indeed, any compensation, and hence without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

A closely analogous question has been before the Courts of other States in cases where it was sought to force the gratuitous rendition of the professional services of attorneys at law to the State or to certain individuals designated by the State's instrumentalities. And in Howard County *vs.* Pollard, 153 Ind., 371, 55 N. E., 87; Clay County *vs.* McGregor, 171 Ind., 634, 87 N. E., 1, 17 Ann. Cas., 333; Blythe *vs.* State, 4 Ind., 525; Webb *vs.* Baird, 6 Ind., 13; Dane County *vs.* Smith, 13 Wis., 585, 80 Am. Dec., 754, it was held that the State nor none of its subdivisions nor agencies can exact of attorneys the gratuitous rendition to the State or to persons designated by it of their services. And since this is true of attorneys, it must necessarily follow that it is true of all labor and those to whom it naturally belongs, no matter what the end of that labor, nor howsoever menial it may be. If the State can not take of

such labor as the lawyer has without justly remunerating him for it, how can it take of such labor as this plaintiff in error has without equally compensating him therefor? These cases are cited to this Court in the earnest belief that they are persuasive authority of the correctness of the petitioner's position and contention that not only the lawyer, or the physician, or the engineer, or the farmer, may not be subjected to involuntary servitude and his property taken without just compensation, but that under our law the same protection must be afforded this petitioner.

In Webb *vs.* Baird, supra, the law required the gratuitous services of an attorney in defending a poor person, provision for the attorney's designation being provided for by another law. The Court said:

> "That any class should be paid for their particular services in empty honors is an obsolete idea belonging to another age and to a state of society hostile to liberty and equal rights. . . . To the attorney his profession is his means of livelihood. His legal knowledge is his capital stock. His professional services are no more at the mercy of the public as to remuneration than are the goods of the merchant, or the crops of the farmer, or the wares of the mechanic."

And the law was declared void as in conflict with an organic provision similar to the organic provision of the Federal Constitution now invoked.

Adopting the reasoning of the Court in this, and the other last-cited cases, no reason is perceived why the same logic and the same rule should not be applied in our case. If it be contended that the "compensation" derived by the petitioner is found in his right to use a road improved by his own enforced labor, we beg to reply that such a reward is an empty honor, and no more sub-

stantial nor just pay than is the remuneration of an attorney who is forced to freely represent an indigent litigant, and who receives as pay the satisfaction that he has aided the course of administrative justice. To this petitioner his labor, though crude and unskilled, "is his capital stock;" his labor is "his means of livelihood;" he is a poor man and his patrimony lies in the strength of his own hand. Can the State take a portion of this against his will under guise of the police power? Or, indeed, of any other power? If it can, a dangerous precedent has been set.

Again, if the State can so appropriate a citizen's property, what becomes of the power of Eminent Domain? Private property can be taken for public use only under and in the exercise of this power, but if we grant that a man's labor can be taken without regard to the requirements of this essential power of the State, the law upon that subject may be vastly altered. For if, in disregard of the requirements of this power, the State can take one sort of property, it can take all.

In Posey Twp. *vs.* Senour, 42 Ind. App., 580, 86 N. E. 440, it was said that the right given by a law to a road overseer to enter land and appropriate materials for the repair of the highways was an exercise of the power of eminent domain, and that the damages occasioned by the taking must be assessed by two disinterested persons in accordance with the requirements of the Indiana general eminent domain law.

Whether or not tangible property can lawfully be subjected to compulsory road duty by the State has been decided in the negative upon a number of different occasions.

The question has been squarely decided by the Supreme Court of Alabama, in construing a law subjecting, under penalty, all implements and animals suitable for

road work, to four days duty per year. In holding the act unconstitutional because violative of the Alabama constitutional requirement that "private property shall not be taken for or applied to public use, unless just compensation be first made therefor," the court said:

> "The books have been examined in vain for an authority which will authorize the exaction from a citizen of the contribution of his property for public service, under the theory that it is his duty as a citizen to so contribute. . . . If the taking for but a few days could be legally sanctioned, the property could as well be impressed for two weeks, two months, or two years. . . . If the legislature can authorize the taking of a man's team and wagons to be used on the roads and without compensation . . . it could require all millers to contribute meal to feed the road hands, all corn growers to supply corn to feed the teams, or all merchants to supply tools for working the roads."
>
> Toone *vs.* State (Ala.), 59 South., 665, 42 L. R. A. (N. S.), 1045.

See, also—

Pumpelly *vs.* Green Bay & M. Canal Co., 13 Wall., 166, 20 L. Ed., 557.

People *vs.* Otis, 90 N. Y., 48.

Counsel therefore conceives, and so, respectfully, submits, that the State can take no man's property in the teeth of a provision of organic law prohibiting it; that a man's labor is his property, just as a copyright, a patent right, the patented article, horses, wagons, or what not, are, each and all, property. And upon the authority of this Court as expressed in the Slaughter House Cases, and upon authority of the Toone case, counsel for the

plaintiff in error, in conclusion of this argument, submits that the law under which Jake Butler was tried, convicted and sentenced in the County Judge's Cout of Columbia County is unconstitutional and void, and the judgment of the Supreme Court of Florida affirming the judgment of the Circuit Court remanding him to custody, was erroneous.

Respectfully submitted.

CHARLES COOK HOWELL,
Attorney for Plaintiff in Error.

SUPREME COURT

OF THE

UNITED STATES

Jake Butler, Plaintiff in Error,

v.

J. W. Perry, as Sheriff of Columbia County, Florida, Defendant in Error.

BRIEF OF T. F. WEST, ATTORNEY GENERAL OF THE STATE OF FLORIDA, FOR THE DEFENDANT IN ERROR.

STATEMENT OF CASE.

This plaintiff in error was tried and convicted in the County Judge's Court of Columbia County, Florida, upon a criminal charge, made in said court in the manner prescribed by statute, that the said plaintiff in error had failed to

work on a certain public road of said county after being duly summoned so to do as required by law.

Upon such conviction the plaintiff in error was sentenced to pay a fine of $5 and the costs of prosecution taxed at $16.05, and in default of the payment of such fine and costs he was to be confined for thirty days in the county jail of said county, as appears by reference to the commitment issued by the judge of said court. (Tr. Rc. p. 3.)

The affidavis filed in the trial court charging the offense for which this plaintiff in error was tried and convicted appears at p. 5 of the Transcript of Record.

After his conviction he declined to avail himself of the privilege of an appeal to the Circuit Court, as he might have done under the statutes of Florida, but petitioned the Judge of the Circuit Court for the circuit in which Columbia County is located for a writ of habeas corpus, and such writ was issued, requiring the defendant in error to bring the body of said plaintiff in error before him at a date therein fixed.

together with his authority for such detention, and directing that he make due return upon said writ. (Tr. Rc. p. 3.)

In this proceeding the plaintiff in error sought to procure his discharge and release upon the ground that the affidavit made against him charged no crime known to the laws of the State of Florida (see copy of replication to return, Tr. Rc. p. 5) and upon the further ground that the statute upon which the charge was based was unconstitutional and void under both the Federal Constitution and the Constitution and the Constitution of the State of Florida (see copy of petition for writ of habeas corpus, Tr. Rc. p. 1, and copy of motion to quash return to writ, Tr. Rc. p. 4).

Upon a hearing before the Circuit Judge in said proceedings, the application for discharge was denied and the plaintiff in error was remanded to the custody of the Sheriff, and from this order a writ of error was sued out to the Supreme Court of the State of Florida.

Upon a review of the case by the supreme Court of the State it was held, in a written opinion, that the affidavit does not fail to allege an offense under the laws of Florida and that

the statute was not unconstitutional and therefore unenforcible, and the pudgment of the Circuit Court remanding the plaintiff in error was affirmed. The opinion of the Supreme Court of Florida, which is reported in 67. Fla. 405, is found at pages 12, 13, 14 and 15 of the Transcript of Record, and the sections of the statute challenged are set out in full in the opinion, together with the title of the act. From this judgment of the Supreme Court of the State writ of error to this court was taken, and it is urged here that the statute complained of is in contravention of the provisions of the Thirteenth and Fourteenth Amendments to the Constitution of the United States. Tr. Rc. p. 17.

ARGUMENT.

Counsel for plaintiff in error refers to a number of authorities which he seeks to make applicable to this case, but he seems to overlook the great number of cases in the various courts of this country in which similar statutes have been considered and upheld.

It is urged that this case is similar to the cases of Clyatt v. United States, 197 U. S. 207, and Bailey v. Alabama, 219 U. S. 219, com-

monly referred to as the Peonage Cases, but this is obviously not the case. This court in those cases defined peonage as follows:

> "It may be defined as a status or condition of compulsory service based upon the indebtedness of the peon to the master.
>
> The basal fact is indebtedness."

It is perfectly apparent, as stated by the Supreme Court of Florida, that the statute involved in this case is wholly different from the statute involved in the Bailey case.

I—The Statute Complained of Does Not Impose Involuntary Servitude Upon the Plaintiff in Error Not as a Punishment for Crime.

The first assignment of error is that the statute challenged here imposes involuntary servitude upon the plaintiff in error not as a punishment for crime in violation of the Thirteenth Amendment to the Federal Constitution.

The answer to this contention is, that the plaintiff in error was charged, tried and convicted of having committed a criminal offense under the laws of Florida, and the Supreme Court of the State in this case decided that the

affidavit filed in the case against him charges a criminal offense under the laws of the State, and we submit that the Supreme Court of Florida is correct in holding, in substance, that the provisions of this amendment to the Federal Constitution are not applicable where a person has been convicted of crime, as in this case.

On this subject the Supreme Court of Florida held, Tr. Rc. p. 14:

> "The organic provisions relating to 'Involuntary servitude' are not applicable where a person has been convicted of a crime, as is the case here. The statute above quoted does not impose arbitrarily unequal or oppressive burdens, or require imprisonment except upon conviction, in due course of law, for the violation of a provision making it a misdemeanor to fail to perform a **public duty** in maintaining the **public highways** in pursuance of the **statute enacted under the police power of the State."** (Bold type ours.)

The correct rule, we think, was stated by the Supreme Court of the State of Kansas in the case of **In re** Dassler, 12 Pac. 130, at p. 134, as follows:

> "The power to impose labor for the repair of public highways and streets has

been exercised from time immemorial, and comes within the police regulation of the state or city. A commutation of such labor in money in lieu of work, while in the nature of a tax, is not, in common speech or in customary revenue legislation, understood as embraced in the term 'tax.' The power to impose this labor is exercised for public purposes, and the general good and convenience of the community. Cooley, Tax'n, (2d Ed.) **supra**; 1 Desty, Tax'n, 296; Starksboro v. Town of Hinesburgh, 13 Vt. 215; State v. Halifax, 4 Dev. 345; Day v. Green, 4 Cush. 433; 1 Dill. Mun. Corp. (3d Ed.) par. 394. Such labor has never been regarded or construed by any of the authorities as falling within the terms of the constitution prohibiting slavery and involuntary servitude. Militia service is also compulsory, and, if the theory of the petitioner is correct, such service. when involntary, is within the terms of section 6 of the bill of rights, and the thirteenth amendment to the constitution of the United States. Such, however, is not the case, and we do not think that article 8 of the constitution of the state conflicts in any way with section 6 of the bill of rights, or with the thirteenth amendment. There are certain services which may be commanded of every citizen by his government, and obedience enforced thereto.

Among these services are labor on the streets or highways and training in the militia."

The Court said further:

"As the performance of work, upon an assessment or levy payable in labor, for the repair of roads or streets, is not the kind of involuntary servitude evidently intended to be embraced within the provisions of the constitution of the state or the United States, the power to impose such labor by the legislature, or a city acting under its authority, cannot well be questioned. If it be urged against the exercise of this power that if the legislature has a right to require a man to work two days upon the road or street, it may compel him to work every day of the year, and thereby make him a slave to the state, the answer is sufficient to say that no such case is before us."

The Supreme Court of the State of Kansas, in the case of State v. City of Topeka, 12 Pac. 310, at p. 315, when it again considered a like question, said:

"Of course, work upon the roads or streets, as provided for by these statutes and ordinances, is 'involuntary servitude;' but it is not that kind of involuntary ser-

vitude which comes within the interdiction of section 6 of the bill of rights of the Kansas constitution, or section 1, art. 13, of the United States constitution. It is like service or 'involuntary servitude' on juries, or in the militia, or in the army, or in removing snow or ice from sidewalks, gutters, etc.; and is not that kind of 'involuntary servitude' which is akin to slavery, as the interdicted involuntary servitude mentioned in the state and federal constitution is. Labor is also property, but it is not taken under these statutes or ordinances without compensation. Good public roads or streets is a sufficient compensation for the labor required to be performed by each individual in keeping them in good order and condition; and this labor, or the money paid in lieu thereof, is imposed and taken as an assessment or a tax, although it is not that kind of assessment or tax mentioned in section 1, art. 11, of the Kansas constitution; and, so far as compensation is concerned, the compensation in this case is just as good as the compensation is in any case where persons are taxed. And although the assessment or tax in this case is levied and imposed only upon a class of persons, to-wit, males between twenty-one and forty-five years of age, still it is valid."

II—The Statute Complained of Does Not Deprive the Plaintiff in Error of His Liberty or Property Without Due Process of Law.

In the second and third assignments of error it is urged that the statute challenged here deprives the plaintiff in error of his liberty and his property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution.

The Supreme Court of Florida, in answering this contention, said, Tr. Rc. p. 15:

> "The sections of the statute here assailed make the failure to perform a public duty a misdemeanor, and in doing so it does not deny due process of law or take property without compensation. Such a regulation is clearly within the province of the law-making power of the State, and the enactment does not appear to be an arbitrary exercise of governmental power that invades the private rights of persons affected by it. See Mashburn v. State, 65 Fla. 470, 62 South. Rep. 586. Uncompensated obedience to laws **duly enacted in the valid exercise of the police power is not a taking of property without due process of law or without compensation.**" (Bold type ours.)

In the case of Galloway v. Town of Tavares, 37 Fla. 58, the court was considering a City ordinance similar to the statute here involved, and in that case the court said, at pp. 62 and 63:

> "Several of the authorities above cited take the view that a requirement of labor upon the public highways is not a tax, but a public burthen, and one put upon the same plane as the burthens of jury and militia duty. **In view of these authorities, and of the fact that the system of working the public highways of the State by requirements of labor of citizens, has long prevailed in this State, that it has never been looked upon as a tax,** that the regulations in regard thereto have never been included in revenue acts, and the enforcement of them has never been confided to the assessors and collectors of taxes, we do not think that the ordinance in question can be said to impose a tax in the sense that the word is used in our Constitution and statutes regulating the power of taxation and the levy, assessment and collection of taxes. Neither do we think that it is a poll or capitation tax, which our Constitution provided shall not exceed one dollar per year." (Bold type ours.)

In the case of Mashburn v. State, 65 Fla., 407, it was again held that the requirement of

labor upon the public highways in this State is not a tax in the sense in which that word is used in the State Constitution.

It is settled, we think, that the enactment of this statute is an exercise of the police power, and not of the taxing power of the State, and it should be so regarded in considering the question of whether or not it is obnoxious to the provisions of the Fourteenth Amendment to the Federal Constitution.

In considering a similar statute in the case of State v. Wheeler (N. C.) 53 S. E. 358, Chief Justice Clark of the Supreme Court of the State of North Carolina, in holding that the statute was not in conflict with the Fourteenth Amendment, said:

> "Nor does the Fourteenth Amendment require equality in levying taxation by the State, if this exaction of labor be taxation. How a State shall levy its taxation is a matter solely for its legislature, subject to such restrictions as the State Constitution throws around legislative action. **If, on the other hand, working the roads by labor is a police regulation or a public duty, certainly it is not a matter of Federal supervision."** (Bold type ours.)

It will appear from what has been said that labor upon the public roads in Florida by certain classes of citizens of the State, is regarded, both by the legislative and judicial departments of the State, as a public duty, and that the Supreme Court of the State has held that the statute here involved is an exercise of the police power and should be regarded as a police regulation.

In a case in which a similar statute was involved, the Supreme Court of the State of Maryland answered a contention similar to that made here, as follows:

> "The appellant is a citizen of this State, and the law of which he complained as having abridged and interfered with his privileges and immunities is a law of his own state, and, this being so, the clause in the Fourteenth amendment on which he relies has no application. The law of which he complains merely imposes upon him the same duty and obligation which it requires of all other persons within the ages designated by the statute, without making any distinction whatever on account of color or race. And there is no ground on which it can be assailed as being repugnant to any of the provisions of the state or Federal Constitutions. For a

> breach of the duty imposed on the appellant and all others, it provides for a fair and impartial trial according to the law of the land, and upon conviction it provides that the offender shall be fined, and stand committed until fine and costs are paid. No one can question the power of the State thus to provide for the enforcement of its law and the punishment of all who violate it."
>
> Short v. State, 80 Md. 392; 29 L. R. A. 404.

In the case of Galloway v. Town of Tavares, **supra**, the court said that the system of working public highways of the State of Florida by requiring citizens of the State to perform labor on such highways has long prevailed in this State, and in the case of State v. Wheeler, **supra**, the court said that for nearly two hundred and fifty years the roads of the State of North Carolina were worked solely by the conscription of labor.

It appears from numerous other decisions and statutes that the public highways of the various states of this Union were for years constructed and maintained largely in this way, so much so that we might say that this is the settled legislative policy in this country, and not only so, but we may say also that practi-

cally all of the courts to which the question has been presented have upheld the legislation.

In the case of Toone v. State (Ala.) 59 So. 665, cited by counsel for plaintiff in error on his brief, the Supreme Coutr of Alabama said:

> "The authorities are numerous to the effect that a law requiring persons to work upon the public roads, in person or by a substitute, or authorizing a fixed sum by way of commutation, is not unconstitutional, and is not double taxation, even where the road is kept up in part by taxation. The theory is that requiring such labor is not taxation at all, but is the execution of a public duty. Elliott on Roads and Streets (3d Ed.) par. 480, and cases cited in note; 37 Cyc. 708, and note 16. This duty seems to be like unto that enjoined upon citizens to serve in person in the militia, etc."

But it is urged that the time and labor of this plaintiff in error are his property and that to require him to work on the public roads as provided by this statute deprives him of his property without due process of law.

In the case of State v. Wheeler, **supra**, the Supreme Court of North Carolina answered this contention in the following language:

"This brings us to the first ground urged. To say that 'time is money' is a metaphor. It expresses merely the fact that time is of value, and that the use of a man's muscle, or of his skill, or of his mentality, will usually procure money in exchange. But time is not money, nor is labor property, in any other sense than that it is usually of some value, and its proceeds belong to the individual or to the parent or guardian if he is a minor, or to the State if he is a convict. But it is not property in the sense that it can be liable to a property tax. As already pointed out in State v. Sharp, 125 N. C. 634, 34 S. E. 264, 74 Am. St. Rep. 663, the conscription of labor to work the public roads is not a tax at all (Cooley, **supra**, 737; Pleasant v. Kost, 29 Ill. 494), but the exaction of a public duty like service upon a jury, grand jury, coroner's inquest, special venire, as a witness, military service, and the like, which men are required to render either wholly without compensation, or, usually, with inadequate pay, as the sovereign may require."

The court said further:

"If the state can take his services for less than their value, it is because it has a right to require them as a public duty, and

hence it can, as of old, require them to be rendered without any compensation at all. Who will say that $10 per month is compensation for the time of a citizen sent to the front in time of war, or to put down riots, and for the hardships and the exposures to weather, to disease, to danger, and to death? If the state can exact such services, it can exact labor to improve its public roads for the public benefit. The worker on the roads get back some benefit therefrom. It was a crude and not very accurate calculation or balancing of benefits, but was a necessity, perhaps, in former times, when currency was scarce and difficult to be obtained even by taxation. It is still a matter resting in the legislative discretion."

In the case of State, Egan, v. McCrillis (R. I.) 66 Atl. 301, in considering a municipal ordinance in which a like principle was involved, said:

> 'From the fact of his citizenship, every citizen is under obligation to render some unpaid service to the State which protects him, reasonable, of course, in view of the exigencies which require such a service from him; and a law which simply defines and enforces such an obligation is entirely within the scope of the legislative power."

In this case a large number of important cases are collected and referred to as sustaining the conclusions reached by the court.

In the case of State v. McMahon, 76 Conn. 97, 55 Atl. 591, the court said:

> "To say that a law defining duties of citizens in serving the State is necessarily a violation of the constitution of guarantees against the confiscation of property and partial and arbitrary discrimination, because the service is unpaid or is one that all citizens are not in a situation to render, is to state a proposition which is radically unsound. Such a theory of selfish immunities from all duties inherent in citizenship is supported by no principle of political ethics and cannot safely be reduced to practice under any government."

The above quotations fully answer and refute the argument and theories advanced by counsel for plaintiff in error, in the language of the courts themselves when some of the statutes were before them for consideration, and we submit that a further discussion would be superfluous.

Similar statutes have been upheld in Georgia (Smith v. City of Elberton, 63 S. E. 48); in Indiana (Leedy v. Incorporated Town of Bour-

hon, 40 N. E. 640); in Ohio (Dennis v. Simon, 36 N. E. 832); in Oklahoma (State v. Rayburn, 101 Pac. 1029); and in various other states, and no case in which a like statute was involved holding to the contrary has been called to the court's attention.

The maintenance of public roads is of the greatest public importance. The State court holds that the enactment of statutes such as the one attacked here, providing for the maintenance of public roads in the manner prescribed, is an exercise of the police power of the States. This court holds that the police power of the State is one of the most essential powers of the government and one of the least limitable—and that, in fact, the imperative necessity for its existence precludes any limitation upon it when not arbitrarily exercised. (Hadacheck v. Los Angeles, 239 U. S. 394.)

We submit that the judgment of the Supreme Court of Florida is in accord with the settled law on the subject in this country, that it is sound in principle and should be affirmed.

Respectfully submitted,

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